

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow. After amending the claims as set forth above, Claims 1-6, 10-14, and 16-20 are now pending in this application.

35 U.S.C. § 112 ¶ 2

On page 2 of the Office Action, the Examiner rejected Claims 2-3, 5-6, and 13-14 under 35 U.S.C. § 112 ¶ 1 as failing to comply with the enablement requirement.

Claims 2-3 are enabled by the specification because the phrase “the upper portion...can flex about the pivot until contacting the upper end of the back frame” is described in the specification in such a way as to enable one skilled in the art to make and/or use the invention. The plain language of original claim 2 provides ample description of this feature when provided in conjunction with description of the compliant back member 60 being preferably pivotally attached at a pair of pivots 68, as recited in paragraph 0024 as originally filed. The fact that all the features of original claim 2 are not presented in the Detailed Description of the Preferred Embodiment does not necessitate a lack of enablement when one of ordinary skill in the art would understand the meaning of the features as originally claimed. MPEP 2164 provides:

when the subject matter is not in the specification portion of the application as filed but is in the claims, the limitation in and of itself may enable one skilled in the art to make and use the claim containing the limitation. When claimed subject matter is only presented in the claims and not in the specification portion of the application, the specification should be objected to for lacking the requisite support for the claimed subject matter...

Because the plain language of original claim 2 in conjunction with original paragraph 0024 of the written description provides ample description for the subject matter of claim 2, the subject matter of claim 2 is enabled. It is noted that the specification has been amended to incorporate the subject matter of claim 2.

Claims 5-6 are enabled by the specification because the phrase “wherein the side bolsters are aligned with the compliant back...such that the compliant back...can be moved clear of the side bolsters” is described in the specification in such a way as to enable one skilled in the art to make and/or use the invention. The plain language of original claim 5 provides ample description of this feature when provided in conjunction with description of

the compliant back, as recited in paragraph 0022 as originally filed. The fact that all the features of original claim 5 are not presented in the Detailed Description of the Preferred Embodiment does not necessitate a lack of enablement when one of ordinary skill in the art would understand the meaning of the features as originally claimed. (See MPEP 2164 above.) Because the plain language of original claim 5 in conjunction with original paragraph 0022 of the written description provides ample description for the subject matter of claim 5, the subject matter of claim 5 is enabled. It is noted that the specification has been amended to incorporate the subject matter of claim 5.

Claim 13 has been amended to remove the features “the second portion pivotally and slidably connected to the seat back frame,” which is the feature allegedly not enabled.

The Applicant request withdrawal of the rejection of Claims 2-3, 5-6, and 13-14 under 35 U.S.C. § 112 ¶ 1.

35 U.S.C. § 112 ¶ 2

On page 3 of the Office Action, the Examiner rejected Claim 16 under 35 U.S.C. § 112 ¶ 2 as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regard as the invention. Claim 16 has been amended, is definite and in compliance with 35 U.S.C. § 112 ¶ 2. The Applicant requests withdrawal of the rejection of Claim 16 under 35 U.S.C. § 112 ¶ 2.

The Applicant notes that the claim amendments described above are intended to clarify the language used in the amended claim, and is in no way intended as limiting or to obtain patentability of the claim. Accordingly, it is believed by the Applicant that the amendments made to the claim in no way impair the ability of the Applicant to obtain the full scope of such a claim as may be available under the Doctrine of Equivalents.

Double Patenting

On page 3 of the Office Action, the Examiner rejected claims 1-14 and 16 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 18-49 of U.S. Patent No. 7,237,847 (“US 7,237,847”) in view of U.S. Patent No. 5,582,459 titled “Chair Having Tilttable Seat Back” to Hama (“Hama”).

The Examiner stated that “Patent 7237847 claims the seat back, back frame, and compliant back, however does not claim rollers.”

The Examiner stated that “Hama teaches the use of a biasing member having a first end including rollers (37, 39) aligned and operatively engages the compliant back member (14).”

The Examiner concluded that “[i]t would have been obvious to one of ordinary skill in the art at the time of invention to modify the seat with slides and a motor as taught by Hama, in order to change the position or location of the seatback and better support the compliant back member.”

Claims 18-49 of US 7,237,847 are directed to an automotive seat.

Hama is directed to a chair with a rearwardly tiltable seat back with a waist supporting portion 4b being relatively pushed forward by a pressing roller 37 to support the waist portion of the seat occupant (col. 9, lines 1-36).

Claim 1 (as amended) is in independent form and recites a “seat for use by an occupant in a vehicle” comprising, in combination with other elements, “an adjustable biasing member adjuster operatively coupled to a spring member...wherein the adjustable biasing member adjuster is configured to effect an amount of lower back tension within the compliant back member by causing a given end of the spring members to rotate.” Claims 2-6, 10-12, and 16 depend from independent Claim 1 (as amended).

The “seat for use by an occupant in a vehicle” recited in independent Claim 1 (as amended) would not have been obvious in view of Claims 18-49 of US 7,237,847, alone or in any proper combination with Hama under 35 U.S.C. § 103(a). Claims 18-49 of US 7,237,847 alone or in any proper combination with Hama do not teach or suggest a “seat for use by an occupant in a vehicle” comprising, in combination with other elements, “an adjustable biasing member adjuster operatively coupled to a spring member...wherein the adjustable biasing member adjuster is configured to effect an amount of lower back tension within the compliant back member by causing a given end of the spring members to rotate.” To transform Claims 18-49 of US 7,237,847 and the chair having a tiltable seat back of Hama into a “seat for use by an occupant in a vehicle” (as recited in Claim 1) would require still further modification, and such modification is taught only by the Applicant’s own disclosure. The suggestion to make the combination of Claims 18-49 of US 7,237,847 and Hama has been taken from the Applicant’s own specification (using hindsight), which is improper.

The “seat for use by an occupant in a vehicle” recited in independent Claim 1, considered as a whole, would not have been obvious in view of Claims 18-49 of US 7,237,847 and/or Hama. The rejection of Claim 1 over Claims 18-49 of US 7,237,847 in view of Hama under 35 U.S.C. § 103(a) is improper. Therefore, Claim 1 is patentable over Claims 18-49 of US 7,237,847 in view of Hama.

Dependent Claims 2-6, 10-12, and 16 which depend from independent Claim 1, are also patentable. See 35 U.S.C. § 112 ¶ 4.

Claim 13 (as amended) is in independent form and recites a “seat for use by an occupant in a vehicle” comprising, in combination with other elements, “a biasing member adjuster connected to second ends of the first and second spring members, and configured to effect an amount of lower back tension within the compliant back member by causing the second ends of the first and second spring members to rotate.” Claim 14 depends from independent Claim 13 (as amended).

The “seat for use by an occupant in a vehicle” recited in independent Claim 13 (as amended) would not have been obvious in view of Claims 18-49 of US 7,237,847, alone or in any proper combination with Hama under 35 U.S.C. § 103(a). Claims 18-49 of US 7,237,847 alone or in any proper combination with Hama do not teach or suggest a “seat for use by an occupant in a vehicle” comprising, in combination with other elements, “a biasing member adjuster connected to second ends of the first and second spring members, and configured to effect an amount of lower back tension within the compliant back member by causing the second ends of the first and second spring members to rotate.” To transform Claims 18-49 of US 7,237,847 and the chair having a tiltable seat back of Hama into a “seat for use by an occupant in a vehicle” (as recited in Claim 13) would require still further modification, and such modification is taught only by the Applicant’s own disclosure. The suggestion to make the combination of Claims 18-49 of US 7,237,847 and Hama has been taken from the Applicant’s own specification (using hindsight), which is improper.

The “seat for use by an occupant in a vehicle” recited in independent Claim 13, considered as a whole, would not have been obvious in view of Claims 18-49 of US 7,237,847 and/or Hama. The rejection of Claim 13 over Claims 18-49 of US 7,237,847 in view of Hama under 35 U.S.C. § 103(a) is improper. Therefore, Claim 13 is patentable over Claims 18-49 of US 7,237,847 in view of Hama.

Dependent Claim 14, which depends from independent Claim 13, is also patentable. See 35 U.S.C. § 112 ¶ 4.

Claims 7-9 have been canceled, which renders the rejection of these claims moot.

The Applicant respectfully requests withdrawal of the rejection of Claims 1-14 and 16 on the ground of nonstatutory obviousness-type double patenting.

Alternatively, the Applicant requests that the double patenting rejection of Claims 1-14 and 16 over Claims 18-49 of US 7,237,847 be held in abeyance until allowable independent claims are indicated by the Examiner in the present Application (since a timely filed terminal disclaimer would overcome the rejection such that further consideration of the claims on that rejection should not be necessary). 37 C.F.R. § 1.111(b).

Claim Rejections – 35 U.S.C. § 103(a)

On page 4 of the Office Action the Examiner rejected Claims 1-14 and 16 as being obvious over WO 03/068557 titled “Automotive Seat with Active Back” to Hancock (“Hancock”) in view of U.S. Patent No. 5,582,459 titled “Chair Having Tilttable Seat Back” to Hama (“Hama”) under 35 U.S.C. § 103(a).

The Examiner stated that:

Hancock discloses the use of a seat (10) for use by an occupant comprising a seat base (12) configured to be supported in the vehicle; a back frame (40) including a first transverse member (44), a first side member (41) and a second side member (43), wherein the first transverse member interconnects each of the side members at a location toward an upper end (45) of the back frame, the back frame further including a second transverse member (46) interconnecting the first and second side members a spaced distance from the first transverse member; a compliant back (60) member having a first end operably connected to the first transverse member and a second end operably connected to the second transverse member. The compliant back is coupled to the second transverse member by at least one pivot member (pair of pivots 68) such that the upper portion (62) of the compliant back extends in a cantilevered fashion over the upper end of the back frame and a spaced distance from the back frame, wherein when the occupant in the seat leans into the upper portion of the compliant back, the upper portion can flex about the pivot until contacting the upper end of the back frame, see column 7 lines 5-15. Further including a side bolster (18), with one side bolster coupled to each of the first and second side members of the back frame and extended from the side members. The side bolsters are aligned with the compliant back such that the compliant back can be moved clear of the side bolsters. The biasing member (100) is coupled to at least one of the side members and the lower portion of the compliant

back. The biasing member includes an adjuster to vary the tension in the biasing member to effect tension in the compliant back. The biasing member includes at least one spring (102). Lateral support member (120) interconnecting the first spring member and the second spring member.

However, the Examiner acknowledged that Hancock does not disclose “the use of biasing member having a first end including rollers aligned and operatively engaged the compliant back member.”

The Examiner stated that Hama discloses “the use of a biasing member having a first end including rollers (37, 39) aligned and operatively engages the compliant back member (14).”

The Examiner concluded that “[i]t would have been obvious to one of ordinary skill in the art at the time of invention to modify the seat with slides and a motor as taught by Hama, in order to change the position or location of the seatback and better support the compliant back member.”

Hancock is directed to a vehicle seat with a back cushion 16 having a compliant back member 60 and a back frame 40 with first and second side members 41 and 43 (paragraphs 0008 and 0030).

Hama is directed to a chair with a rearwardly tiltable seat back with a waist supporting portion 4b being relatively pushed forward by a pressing roller 37 to support the waist portion of the seat occupant (col. 9, lines 1-36).

Claim 1 (as amended) is in independent form and recites a “seat for use by an occupant in a vehicle” comprising, in combination with other elements, “an adjustable biasing member adjuster operatively coupled to a spring member...wherein the adjustable biasing member adjuster is configured to effect an amount of lower back tension within the compliant back member by causing a given end of the spring member to rotate.” Claims 2-6, 10-12, and 16 depend from independent Claim 1 (as amended).

The “seat for use by an occupant in a vehicle” recited in independent Claim 1 (as amended) would not have been obvious in view of Hancock, alone or in any proper combination with Hama under 35 U.S.C. § 103(a). Hancock alone or in any proper combination with Hama does not disclose, teach or suggest a “seat for use by an occupant in a vehicle” comprising, in combination with other elements, “an adjustable biasing member adjuster operatively coupled to a spring member...wherein the adjustable biasing member

adjuster is configured to effect an amount of lower back tension within the compliant back member by causing a given end of the spring member to rotate.” To transform the automotive seat with active back of Hancock and the chair having a tiltable seat back of Hama into a “seat for use by an occupant in a vehicle” (as recited in Claim 1) would require still further modification, and such modification is taught only by the Applicant’s own disclosure. The suggestion to make the combination of Hancock and Hama has been taken from the Applicant’s own specification (using hindsight), which is improper.

The “seat for use by an occupant in a vehicle” recited in independent Claim 1, considered as a whole, would not have been obvious in view of Hancock and/or Hama. The rejection of Claim 1 over Hancock in view of Hama under 35 U.S.C. § 103(a) is improper. Therefore, Claim 1 is patentable over Hancock in view of Hama.

Dependent Claims 2-6, 10-12, and 16 which depend from independent Claim 1, are also patentable. See 35 U.S.C. § 112 ¶ 4.

Claim 13 (as amended) is in independent form and recites a “seat for use by an occupant in a vehicle” comprising, in combination with other elements, “a biasing member adjuster connected to second ends of the first and second spring members, and configured to effect an amount of lower back tension within the compliant back member by causing the second ends of the first and second spring members to rotate.” Claim 14 depends from independent Claim 13 (as amended).

The “seat for use by an occupant in a vehicle” recited in independent Claim 13 (as amended) would not have been obvious in view of Hancock, alone or in any proper combination with Hama under 35 U.S.C. § 103(a). Hancock alone or in any proper combination with Hama does not disclose, teach or suggest a “seat for use by an occupant in a vehicle” comprising, in combination with other elements, “a biasing member adjuster connected to second ends of the first and second spring members, and configured to effect an amount of lower back tension within the compliant back member by causing the second ends of the first and second spring members to rotate.” To transform the automotive seat with active back of Hancock and the chair having a tiltable seat back of Hama into a “seat for use by an occupant in a vehicle” (as recited in Claim 13) would require still further modification, and such modification is taught only by the Applicant’s own disclosure. The suggestion to

make the combination of Hancock and Hama has been taken from the Applicant's own specification (using hindsight), which is improper.

The "seat for use by an occupant in a vehicle" recited in independent Claim 13, considered as a whole, would not have been obvious in view of Hancock and/or Hama. The rejection of Claim 13 over Hancock in view of Hama under 35 U.S.C. § 103(a) is improper. Therefore, Claim 13 is patentable over Hancock in view of Hama.

Dependent Claim 14, which depends from independent Claim 13, is also patentable. See 35 U.S.C. § 112 ¶ 4.

Claims 7-9 have been canceled, which renders the rejection of these claims moot.

The Applicant respectfully requests withdrawal of the rejection of Claims 1-14 and 16 under 35 U.S.C. § 103(a).

Allowability of claims 17-20

Claims 17-20 depend from and contain all the features of claim 1 or 13, and are allowable for the reasons indicated above, without regard to the further patentable features contained therein. The Applicant respectfully requests allowance of claims 17-20.

Conclusion

It is submitted that each outstanding rejection to the Application has been overcome, and that the Application is in a condition for allowance. The Applicant requests consideration and allowance of all pending Claims 1-6, 10-14, and 16-20.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date

2/6/2009

By

Matthew J. Kremer

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 672-5582
Facsimile: (202) 672-5399

Matthew J. Kremer
Attorney for Applicant
Registration No. 58,671